IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Smt. Vimla
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.5671/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 29th November, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.N.R. Choudhary, Advocate for the petitioner.
Mr.Shyam Toshniwal for
Mr.N.M. Lodha, Additional Advocate General.

BY THE COURT

Heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner submits that the petitioner applied for appointment on the post of Nurse Grade II in response to the advertisement dated 31st March, 2003 issued by the Director, Medical & Health Services, Rajasthan, Jaipur whereby applications were invited for appointment against 563 vacancies. Apart from vertical reservation of O.B.C. Category, there was horizontal reservation for females to the extent of 30%. The respondents have however wrongly applied the rule of reservation in making appointments. In spite of the fact that petitioner's merit is 61.76, she has not been appointed but the candidates with merit from 60.012% to 61.65% whose names appear at serial Nos.374 to 416 in the merit list have been appointed.

Learned counsel for the petitioner has invited my attention to the judgment of a Co-ordinate Bench of this Court in Jaiwanti Solanki & Anr. vs. State of Rajasthan & Ors., passed in S.B. Civil Writ Petition No.784/2003 decided on 14th December, 2005 delivered in respect of same selection process. This Court on consideration of the similar argument

while allowing the writ petition observed as under:-

> "The stand taken by the respondents as above is absolutely misconceived and is absolutely erroneous as no reservation is prescribed for general categories. The reservation prescribed is only for socially and educationally backward categories, those are, Scheduled Castes, Scheduled Tribes and OBCs. It is well settled that if a person belonging to reserved categories stands in general merit then his/her candidature is required to be considered in accordance with general merit. Appointment in accordance with general merit cannot be denied to a person belonging to a Scheduled Caste, Scheduled Tribes or OBCs, otherwise that shall be contrary to the spirit of the object behind providing reservation to those categories. The authorities empowered to implement reservation provided for Scheduled Castes, Scheduled Tribes and OBCs must understand that the percentage to extent reservation is prescribed is minimum quota required to be filled in. I should always be kept in mind that the reservation policy is framed with an object to uplift social and educational status of the underprivileged classes of our society. The interpretation put forth in present case is totally contrary to the object for providing reservation of OBCs, while making appointments as it restricts appointment to the extent of reservation prescribed, as if by prescribing a maximum limit is prescribed with regard to the categories for benefit of whom reservation is in prevalence."

The aforesaid judgment was affirmed by the Division

Bench in D. B. Special Appeal No.245/2006 whereby the special appeal filed by the State was dismissed. When the similar writ petition was again allowed by a Co-ordinate Bench in Veena Borana Vs. State of Rajasthan & Ors. passed in S.B. Civil Writ Petition No.5751/2003 decided on 17th February, 2006, the matter was again taken to Division Bench by the State of Rajasthan in D.B. Civil Special Appeal (W) No.306/2006 decided on 14th November, 2006. The Division Bench while rejecting the special appeal observed as under:-

> "The dispute relates to appointment on the post of Nurse Gr. II. The respondent applied for appointment under the OBC category and she secured 61.70% marks. It is not in dispute that last candidate selected in the general category had secured 60.021% i.e. less than the respondent. In the case of Jaiwanti Solanki, it was held that where the person belonging to OBC category secures sufficient marks for appointment in the general category, the authorities are obliged to consider his case in that category. The order was in accordance with law laid down by the Apex Court in Indira Sawhney & Ors. vs. Union of India & Ors., 1992 Supp. (3) SCC 217. The learned Single Judge therefore, did not commit any error in upholding the claim of the respondent."

Having considered the arguments advanced by the

learned counsel for the parties, I am satisfied that the controversy raised in the present petition is squarely covered by the aforesaid judgments.

The writ petition is accordingly allowed and the respondents are directed to consider the candidature of the petitioner according to her merit and if found suitable, appoint her on the post of Nurse Gr.II. Appointment of the petitioner although shall take effect from the date on which such appointment was given to the candidate having lesser mark than the petitioner immediately below her in the merit, but the petitioner shall not be entitled to any arrears/back wages for the intervening period although she would be allowed notional benefits. Compliance of the judgment be made within a period of two months.

[MOHAMMAD RAFIQ],J.

AKC.